IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 761

NORMAN M. LITTELL, *Petitioner,*

v.

STEWART L. UDALL, Secretary of the Interior

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR REHEARING

NORMAN M. LITTELL, petitioner herein, respectfully requests that this Court grant rehearing of its order dated January 9, 1967, which denied certiorari, and that this Court now grant certiorari.

Since the entry of that order on January 9, 1967, a majority of the Navajo Tribal Council, which is the governing body of the Navajo Tribe of Indians (2

N.T.C. § 101; Pet. App. A24), have indicated their concern over the consequences of the decision of the court below; have reaffirmed their confidence in the petitioner as the Tribe's General Counsel despite that decision, which they consider factually erroneous; and have requested this Court to hear the present case.

These council members have expressed their views by way of petition, because by reason of parliamentary tactics the resolution that they favored could not be brought to a timely vote. The petition (less signatures) and the resolution are set forth in the appendix hereto.[1] The substance of the points made by the majority members of the Navajo Tribal Council may be briefly summarized as follows:

The decision below seriously and adversely limits the right of the Navajo Tribe of Indians to govern itself in its internal affairs.

The decision below abridges the Navajos' right to counsel in a particularly vital aspect, since many of the Tribe's interests are adverse to those of or represented by the Secretary of the Interior, who has now been recognized as having virtually unlimited power to remove and select counsel for the Tribe.

The decision below is in error in saying that petitioner's use of general counsel attorneys on claims cases, on which that decision relied to justify his removal by the Secretary, was not known either to the Secretary or to the Tribe; "in truth and in fact, the Secretary's representatives were fully informed at all times and so were tribal officials and councilmen of

[1] Copies of the petition, signatures thereto, and of the resolution, together with supporting proof of genuineness, have been lodged with the Clerk and served on opposing counsel.

this Council who attended said trial as observers or witnesses."

"The Navajo Tribal Council affirms its confidence in its General Counsel, Norman M. Littell * * *."

The petition and the draft resolution speak for themselves. It is only necessary to add that this Court has but recently recognized the Navajos' rights of self-government in their internal matters (*Williams* v. *Lee*, 358 U.S. 217), and to note that the scope of the individual's right to counsel has been steadily broadened in a series of decisions here over the last thirty years (*Johnson* v. *Zerbst*, 304 U.S. 458; *Gibbs* v. *Burke*, 337 U.S. 773; *Gideon* v. *Wainwright*, 372 U.S. 335, overruling *Betts* v. *Brady*, 316 U.S. 455; *Escobedo* v. *Illinois*, 378 U.S. 478; *Miranda* v. *Arizona*, 384 U.S. 436). Yet only in an action such as this one, brought by a tribal attorney at his own expense against a public officer whose expenses are underwritten by the public, can the Indians' right to counsel be vindicated.

Will Indians who assert such rights, who seek with the aid of counsel of their own choosing to obtain for themselves and for their children some modicum of the advantages of an affluent and indeed opulent society, continue to be what the President in his recent State of the Union address called "the forgotten in our midst"?[2]

We ask this Court to heed the cry of the majority of the Navajo Tribal Council, who represent the Navajo Tribe of Indians (comprising about one quarter of the

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[2] "We should embark upon a major effort to provide self-help assistance to the forgotten in our midst—the American Indians and the migratory farmworkers." 113 Cong. Rec. p. H27 (Jan. 10, 1967).

entire Indian population of the country); to grant rehearing of its previous order; and to grant the writ of certiorari in this case.

Respectfully submitted.

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Of Counsel.

FEBRUARY 1967.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58(2).

FREDERICK BERNAYS WIENER.

APPENDIX

PETITION TO

THE SUPREME COURT OF THE UNITED STATES

Attached hereto is a copy of a Proposed Resolution of the Navajo Tribal Council, entitled "Regarding General Counsel Contract and Requesting the Supreme Court of the United States to hear the case of Udall vs. Littell." This item of business was properly added to the agenda for this session of Council by action of the Advisory Committee on Friday, January 20, 1967 (Title 2, Navajo Tribal Code, Section 163). However, the chairman of the meeting of the Navajo Tribal Council for the afternoon of Thursday, January 26, 1967, erroneously informed the Council that this item had not been added to the agenda and would therefore require a two-thirds vote of the members of the Council to add it to the agenda, pursuant to Title 2, Section 163(d)(B), Navajo Tribal Code. Voting under this erroneous impression, the Navajo Tribal Council voted 26 in favor of adding this item to the agenda, 32 opposed, and 1 abstaining (12 members were absent). The attached Proposed Resolution was not distributed to nor read by members of the Navajo Tribal Council and none of the members of the Navajo Tribal Council were informed of the contents of this Proposed Resolution.

The undersigned members of the Navajo Tribal Council, constituting the majority of the Council, have read the attached Proposed Resolution and have signed their names to this Petition to indicate that they are in favor of the attached Proposed Resolution of the Navajo Tribal Council and that, had it been presented to the Navajo Tribal Council in regular session for a vote on the merits of the Proposed Resolution, they would have voted in favor of said resolution and do by signing this Petition vote in favor of the attached Proposed Resolution of the Navajo Tribal Council, entitled "Regarding General Counsel Contract and

Requesting the Supreme Court of the United States to hear the case of Udall vs. Littell."

There are at present only 71 members of the Navajo Tribal Council. There are 3 unfilled vacancies due to recent deaths.

Dated this 26th day of January, 1967.

[36 signatures omitted]

PROPOSED RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

Regarding General Counsel Contract and Requesting the Supreme Court of the United States to Hear the Case of Udall vs. Littell

WHEREAS:

1. The Navajo Tribal Council is greatly concerned over the refusal of the Supreme Court to hear the case of *Udall* vs. *Littell*, and

2. There is only a short period of time allowed in which a new petition for a hearing may be filed with the Supreme Court, and

3. Such short period of time does not allow the Navajo Tribal Council to fully and completely apprise the court of all reasons for its concern, as well as all the facts constituting the interest of the Navajo Tribe and all American Indians, in having the case of *Udall* vs. *Littell* heard by the Supreme Court.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Supreme Court be advised that, in the opinion of the Navajo Tribal Council, the governing body of the Navajo Tribe of Indians, to allow the decision of the United States Court of Appeals to stand will result in both immediate and long range harm to the Navajo Tribe and all American Indians in that:

A. Such decision places dictatorial powers in the Secretary of the Interior to interfere with any and all actions of the duly constituted legislature of the Navajo Tribe whenever, in his opinion, an "unseemly squabble" occurs, and thereby denies the Navajo Tribe of its right to govern itself in all internal matters, and particularly one as important as the right to hire and discharge legal counsel. Squabbles, unseemly and otherwise, are an inherent part of any democratic legislature.

B. The Navajo Tribe's right to freedom to contract has been unconstitutionally abridged by allowing the Secretary of the Interior not just a trustee's right of protective inquiry, but the power to revoke contracts without consulting with, or, as in this case, against the wishes of the Tribe.

C. The Navajo Tribe's right as an entity and the right of individual Indians as members of the Tribe and citizens of the United States to secure independent counsel, and thus their right to due process of law, has been abridged by allowing the Secretary of the Interior to, in effect, select counsel for the Tribe, even though such counsel will in most cases be representing the Tribe *against* the self-same Secretary of the Interior. There is a particular danger here in that the property interests of the Tribe have been in the past and are now often adverse to those of the Secretary of the Interior or his friends.

D. The opinion of the United States Court of Appeals operates to deprive the Navajo Tribe of rights which it has under the contract with its General Counsel, which rights were obtained and paid for solely by the Navajo Tribe, and which rights have a definite monetary value, without the due process of law.

E. The Supreme Court is the Tribe's last resort. All administrative appeals have been exhausted, and an appeal to the Congress of the United States for an investigation leading to remedial legislation has been refused.

2. The Navajo Tribal Council is aware that the Court of Appeals relied on the following as the valid reason for the Secretary's dismissal of the General Counsel: ". . . it is enough that undisputed evidence and indeed admissions of Appellee showed that he had used salaried staff lawyers of the Tribe to perform services on claims cases for which he had contracted to supply all legal services for a 10% contingent fee."

The Navajo Tribal Council respectfully submits that the Court of Appeals is in error in holding that the General Counsel did not report to the Secretary of the Interior or Tribal officials the use of general counsel attorneys instead of claims attorneys in the trial of Healing vs. Jones, whereas in truth and in fact, the Secretary's representatives were fully informed at all times and so were tribal officials and councilmen of this Council who attended said trial as observers or witnesses. In any event said minimal use of general counsel attorneys to meet the emergent need was not only trivial in comparison to the magnitude of the case but in no event would constitute grounds for terminating the contract of our General Counsel.

3. The Navajo Tribal Council affirms its confidence in its General Counsel, Norman M. Littell, and requests that the General Counsel and all associate attorneys in the Legal Department of the Navajo Tribe continue in the performance of their duties pursuant to and in accordance with the contracts of employment heretofore duly approved by the Navajo Tribal Council.

4. The Navajo Tribal Council respectfully petitions the Supreme Court of the United States to grant the petition

for certiorari for review of the case of Udall vs. Littell, to correct errors of the opinion of the United States Court of Appeals; to protect American Indians from arbitrary use or abuse of power by this or any other Secretary of the Interior; and to protect the right of the Tribe to select its attorneys to advise it independently and without fear of interference, and to protect the right of Tribal self-government heretofore defined and defended by the decisions of this honorable court.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of in favor and opposed, this day of , 1967.

PRESIDING CHAIRMAN

1/20/67